## IN THE UNITED DISTRICT COURT FOR THE DISTRICT OF KANSAS

	Plaintiff,	) ) )	CIVIL ACTION
V •		)	No.
		)	
		)	
		)	
	Defendant.	)	
		_)	

INSTRUCTIONS TO THE JURY

Members of the Jury:

Now that you have heard all of the evidence, it becomes my duty to give you the instructions concerning the law applicable to this case. In the interest of clarity, I will read the instructions to you, and each of you will have a copy of the instructions in the jury room.

It is your duty as jurors to follow the law as I shall state it to you, and to apply that law to the facts as you find them from the evidence. You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole. Neither are you to be concerned with the wisdom of any rule of law stated by me.

Regardless of any opinion you may have as to what the law is or ought to be, it would be a violation of your sworn duty to base a verdict upon any view of the law other than that given in the instructions, just as it would also be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything other than the evidence.

Plaintiff claims

Defendant denies

These are merely the contentions and denials of the parties. They are not evidence. The contentions must be established and proven by a preponderance of the evidence.

Burden of proof means burden of persuasion. A party who has the burden of proof must persuade you that [his][her][its] claims are more probably true than not true, i.e., by a preponderance of the evidence. In determining whether a party has met its burden, you will consider all the evidence, whether produced by plaintiff or defendant.

To prove that something is more likely true than not true does not necessarily mean by the greater number of witnesses, or the length of the presentation of testimony, but rather by the greater weight of the evidence, taken together—that is, that evidence upon any question or issue which convinces you most strongly of its truthfulness. If the evidence on an issue is equally balanced, then the party having the burden to establish that issue must fail.

There are two kinds of evidence: direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another fact exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence.

It is for you to decide whether a fact has been proved by circumstantial evidence. In making that decision, you must consider all the evidence in the light of reason, common sense, and experience.

Although you must consider all of the evidence, you are not required to accept all of the evidence as true or accurate.

You are the sole judges of the credibility or "believability" of each witness and the weight to be given to his or her testimony. In weighing the testimony of a witness, you should consider the witness's relationship to plaintiff or to defendant; any interest the witness may have in the outcome of the case; the fees, if any, charged by a witness retained to state his opinion; the witness's manner while testifying; the opportunity to observe or acquire knowledge concerning the facts about which the witness testified; the witness's candor, fairness and intelligence; and the extent to which the witness has been supported or contradicted by other credible evidence. You may, in short, accept or reject the testimony of any witness in whole or in part.

When weighing conflicting testimony you should consider whether the discrepancy has to do with a material fact or with an unimportant detail, and should keep in mind that innocent misrecollection—like failure of recollection—is not uncommon.

In addition, while you must consider only the evidence in the case, you are permitted to draw such reasonable inferences from the testimony and exhibits as you feel are justified in the light of common experience. In other words, you may make deductions and

reach conclusions which reason and common sense lead you to draw from the facts which have been established by the testimony and evidence.

A witness may be discredited or "impeached" by contradictory evidence, or by evidence that at some other time the witness has made an oral or written statement or testified in a deposition in a manner which is inconsistent with the witness's present testimony on a matter which is material to the issues.

If you believe that any witness has been so impeached, then it is your exclusive province to give the testimony of that witness such credibility or weight, if any, you think it deserves.

Expert witnesses are persons who by knowledge, skill, experience, training and education have become expert in some art, science, profession, or calling. Such witnesses may state opinions as to relevant and material matters in subjects in which they profess to be expert, and also may state their reasons for the opinions.

You should consider any expert opinion received in evidence in this case, and give it such weight as you may think it deserves. If you should decide that the opinions of an expert witness are not based upon sufficient knowledge, skill, experience, training and education, or if you should conclude that the reasons given in support of the opinions are not sound, or that the opinions are outweighed by other evidence, you may disregard the opinions entirely.

During the trial, testimony has been read to you by way of deposition, consisting of sworn recorded answers asked of the witness in advance of the trial by one or more of the attorneys for the parties to the case. The testimony of a witness who, for some reason, cannot be present to testify from the witness stand may be presented in writing under oath, in the form of a deposition. That testimony is entitled to the same consideration, and is to be judged as to credibility, and weighed, and otherwise considered by the jury, insofar as possible, in the same way as if the witness had been present, and had testified from the witness stand.

In deciding the facts of this case, you must not be swayed by bias or prejudice or favor as to any party. Our system of law does not permit jurors to be governed by prejudice or sympathy or public opinion. Both the parties and the public expect that you will carefully and impartially consider all of the evidence in the case, follow the law as stated by the court, and reach a just verdict regardless of the consequences.

This case should be considered and decided by you as an action between persons of equal standing in the community, and holding the same or similar stations in life. All persons, including corporations, stand equal before the law and are to be dealt with as equals in a court of justice.

At times during the trial the court has passed upon objections to the admission of certain testimony or things into evidence. Questions relating to the admissibility of evidence are solely questions of law for the court and you must not concern yourselves with the reasons for my rulings. In your consideration of the case you must draw no inferences from my rulings and you must consider only the evidence which has been admitted.

Neither in these instructions, nor in any ruling, action or remark that I have made during the course of this trial have I intended to interpose any opinion or suggestion as to how I would resolve any of the issues of this case. If I have made any ruling, action or remark that you believe indicates how I would decide this case, I instruct you to disregard it.

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During the trial you have had the option to take notes. You may refer to your notes during your deliberations, but remember that your notes are not evidence. Remember, too, that it is your individual memories of the evidence, not your notes, which must guide your decision regarding the evidence upon which you must base your verdict.

You are judges of the facts and it is your duty to determine the facts. In so doing you must consider only the evidence I have admitted. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record, and any stipulations as to evidence.

Remember that any statements, objections or arguments made by the lawyers are not evidence in the case. The function of the lawyers is to point out those things that are most significant or most helpful to their side of the case, and in so doing, to call your attention to certain facts or inferences that might otherwise escape your notice.

In the final analysis, however, it is your own recollection and interpretation of the evidence that controls.

Your verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree thereto. Your verdict must be unanimous.

It is your duty as jurors to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges--judges of the facts. Your sole interest is to ascertain the truth from the evidence.

A mistake which a juror or jurors sometimes make in deliberating on a verdict is injecting an issue into the case on which there was no evidence. Such a mistake may result from a misunderstanding of the instructions which state that the jurors may use common sense and experience in evaluating facts shown in the evidence. Such advice merely means that if a fact is asserted which is contrary to ordinary human experience and belief, the fact may be rejected as not true. In the alternative, if a fact is in accord with ordinary human experience and belief, it may be accepted as true.

A juror's personal experiences ordinarily are not common sense. Most of a juror's mental function is to use his or her sense of good judgment to determine the truth, which means determining the believability of evidence admitted by the court. Use of common sense does not include or invite the consideration or introduction of discussion by a juror of a fact situation or issue not in the case. Likewise, the permission to use one's common sense does not mean a jury's license to decide the case any way it wishes. The jury's verdict must be based on the evidence and all of the court's instructions.

A final suggestion by the court--technically not an instruction upon the law--may assist your deliberations. The attitude of jurors at the outset of and during their deliberations is important. It is seldom productive for a juror, immediately upon entering the jury room, to make an emphatic expression of his or her opinion upon the case or to announce a determination to stand for a certain verdict. The reason is obvious: we are all human and it is difficult to recede from a position once definitely stated, even though later convinced it is unsound.

Jurors are selected for the purpose of doing justice. This presupposes and requires deliberation—counseling together in an effort to agree. Have in mind at all times, therefore, that you are a deliberative body, selected to function as judges of the facts in a controversy involving the substantial rights of the parties. You will make a definite contribution to efficient administration of justice when and if you arrive at a just and proper verdict under the evidence which has been adduced. No one can ask more and you will not be satisfied to do less.

Upon retiring to the jury room you should first select one of your number to act as your foreperson, who will preside over your deliberations and be your spokesperson here in court. The second thing you should do is read the court's instructions. One of the purposes of the instructions is to guide your deliberations. Not only will your deliberations be more productive if you understand the legal principles upon which your verdict must be based but, for your verdict to be valid, you must follow the court's instructions throughout your deliberations. Remember, you are judges of the facts, but you are bound by your oath to follow the law stated in the instructions.

A form of verdict has been prepared for your convenience. When you have reached unanimous agreement as to your verdict, you will have your foreperson fill it in, date and sign it, and then notify my law clerk that you have reached a verdict.

If, during your deliberations, you should desire to communicate with the court, please reduce your message or question to writing, signed by the foreperson, and pass the note to my law clerk, who will bring it to my attention. I will then respond as promptly as possible, either in writing or by having you return to the courtroom so that I can address you orally. I caution you, however, with regard to any message or question you might send,

that you should never state or specify your numerical division at the time.

MONTI L. BELOT
UNITED STATES DISTRICT JUDGE